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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM J. MATTHEWS,

Defendant and Appellant.

B205012

(Los Angeles County
Super. Ct. No. BA292435)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Craig E. Veals, Judge. Affirmed.

Tara K. Hoveland, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant William J. Matthews appeals from a judgment entered after a jury returned a verdict of guilty of count 1, first degree robbery of Horace Coleman (Pen. Code, § 211);¹ count 2, second degree robbery of Elston Poston (§ 211), and count 3, second degree robbery of Duwaun Williams (§ 211). As to count 1, the jury found true the allegation that the crime was committed in a dwelling house while appellant acted in concert with two or more persons (§ 213, subd. (a)(1)(A)), and that as to all counts, appellant personally used a firearm (§ 12022.53, subd. (b)). In a bifurcated proceeding, appellant admitted the allegation that he had one prior serious felony conviction for purposes of section 667, subdivision (a)(1) and for purposes of section 667, subdivisions (b) through (i) and section 1170.12, subdivisions (a) through (d) (the “Three Strikes” law).

The trial court sentenced appellant to 37 years eight months in prison as follows: as to count 1, the midterm of six years doubled pursuant to the Three Strikes law for a total of 12 years, plus 10 years pursuant to section 12022.53, subdivision (b), plus five years for the serious felony prior pursuant to section 667, subdivision (a)(1); as to count 3, one-third the midterm of 36 months, which is 12 months, doubled pursuant to the Three Strikes law for a total of two years, plus an additional one-third of a 10-year term pursuant to section 12022.53, subdivision (b); as to count 4, one-third the midterm of 36 months, which is 12 months, doubled pursuant to the Three Strikes law for a total of two years, plus an additional one-third of a 10-year term pursuant to section 12022.53, subdivision (b).

We affirm.

CONTENTIONS

Appellant contends that: (1) the trial court abused its discretion when it denied his posttrial motion made pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*);

¹ All further statutory references are to the Penal Code unless otherwise indicated.

(2) the trial court failed to obtain a competent, knowing, and intelligent waiver of his right to counsel; and (3) the trial court's denial of his posttrial motions was an unconstitutional restriction of his right to self-representation.

FACTS AND PROCEDURAL HISTORY

On October 2, 2005, appellant and another man visited Horace Coleman (Coleman), whom appellant knew through Coleman's cousin. Coleman works in the music industry and has a recording studio in his house. Appellant arranged the meeting by asking Coleman to review a contract for him. He also said he wanted to give Coleman money for his cousin. After some small talk, appellant and the second man threatened Coleman at gunpoint. They bound Coleman's hands behind his back, made him lie face down on the floor, and bound his feet together with tape. The men also taped Coleman's mouth and eyes shut. Coleman heard a phone being dialed and people entering the front door a few minutes later. Coleman testified that three to four people ransacked his home for the next two hours. The robbers stole approximately 14 guitars, a mixing board, keyboards, computers, jewelry, money, and Coleman's Range Rover. Later, Coleman discovered that seven of his guitars had been sold to a pawn shop near his home. Coleman repurchased the guitars. Coleman identified appellant from a photo six-pack and at trial.

On October 13, 2005, Amos Sloan (Sloan), a security guard, noticed appellant standing outside the window of the E.B. Games store. Sloan testified that he believed appellant was "casing" the store.

On October 14, 2005, appellant and two others robbed the E.B. Games store where Elston Poston (Poston) and Duwaun Williams (Williams) worked. Appellant pointed a gun at Poston, ordering him to open the register. He also pointed the gun at Williams, telling him not to be a hero and ordering him to lie on the ground. The other men bound Williams and a customer. Appellant told Poston to fill a box with merchandise. He also ordered him to open the safe and give him the deposits from the previous day. Then

appellant made Poston lie down in the back of the store. The men filled bags and boxes with approximately \$12,000 to \$14,000 worth of cash and merchandise.

Williams, Poston, and Sloan identified appellant from a six-pack photo array and at trial. Sloan also recognized appellant from a videotape taken by the E.B. Games store surveillance camera. At trial, Sloan described tattoos on appellant's neck and lower legs. The parties stipulated that appellant had tattoos on his lower legs.

The jury returned its verdict of guilty on April 20, 2007. On August 17, 2007, appellant made a *Marsden* motion which was denied, and a motion pursuant to *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*), which was granted. On September 18, 2007, appellant in propria persona, waived his right to jury trial on the priors and admitted them. On November 27, 2007, appellant filed a motion for pretrial discovery, a motion for production of trial transcripts, a motion for in propria persona funding, and a motion for a continuance.

On December 13, 2007, at the sentencing hearing, appellant requested trial transcripts and discovery. The trial court denied appellant's motions and imposed sentence.

DISCUSSION

I. The trial court did not abuse its discretion in denying appellant's posttrial *Marsden* motion

Appellant contends that his rights to due process and effective assistance of counsel were violated when the trial court refused to appoint him substitute counsel for purposes of a motion for new trial based on ineffective assistance of counsel. We conclude that the trial court did not abuse its discretion in denying appellant's posttrial *Marsden* motion.

"When, after trial, a defendant asks the trial court to appoint new counsel to prepare and present a motion for new trial on the ground of ineffective assistance of counsel, the court must conduct a hearing to explore the reasons underlying the request. [Citations.] If the claim of inadequacy relates to courtroom events that the trial court

observed, the court will generally be able to resolve the new trial motion without appointing new counsel for the defendant. [Citation.] If, on the other hand, the defendant's claim of inadequacy relates to matters that occurred outside the courtroom, and the defendant makes a 'colorable claim' of inadequacy of counsel, then the trial court may, in its discretion, appoint new counsel to assist the defendant in moving for a new trial. [Citations.]" (*People v. Diaz* (1992) 3 Cal.4th 495, 573-574.)

Substitute counsel should be appointed under the *Marsden* standard when the trial court finds that the defendant has shown that a failure to replace appointed attorney would substantially impair the right to assistance of counsel. (*People v. Smith* (1993) 6 Cal.4th 684, 696.) That is, the defendant must show that his appointed attorney was not providing adequate representation or that the defendant and the attorney have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result. (*Ibid.*) To the extent there is a credibility issue between defendant and counsel at the hearing, the trial court is entitled to make determinations of credibility. (*Id.* at p. 696.)

Appellant contends he made a sufficient showing that his trial counsel was ineffective, claiming he failed to investigate or call defense and prosecution witnesses, and failed to investigate specific defense theories he suggested. Appellant also complains that his trial counsel failed to notify him that his case was proceeding to trial until the day of trial.

We first note that the record discloses that appellant had approximately 15 trial settings leading up to the date of trial. We therefore find it difficult to believe that he was caught unaware on the day of trial. Second, our review of the sealed *Marsden* transcripts shows that the trial court carefully questioned appellant and his trial counsel about his attempts to contact appellant's witnesses.

At the hearing, appellant claimed that his counsel told him that his uncle would be flown from Seattle for the trial. He complained that his uncle did not testify at trial. On the other hand, appellant's trial counsel represented that appellant did not give his

investigator the information necessary to contact the uncle or other witnesses. Nor did appellant's uncle contact trial counsel. Trial counsel denied that he had promised to fly appellant's uncle from Seattle. Appellant also asserted his counsel failed to investigate a security guard at a pawn shop who would testify that Coleman pawned some of the recording equipment after appellant was incarcerated. Trial counsel represented that appellant did not mention the security guard witness until after the trial.

Appellant also complained that his counsel did not investigate why appellant had not been sent to Patton State Hospital. He stated that "at the time [he] was coming down off shroom, kind of hallucinating," but that since then he has received proper medication. The trial court ascertained that appellant did not present a legal issue to the court, but merely wanted to know why he was not admitted to Patton State Hospital. In fact, a minute order dated August 15, 2006, reflects that appellant was found mentally competent a year before the *Marsden* hearing.

We conclude that the trial court acted within its discretion in denying appellant's posttrial *Marsden* motion. The trial court allowed appellant to present his complaints, carefully inquired into them, and allowed trial counsel to respond. The trial court acted within its discretion in accepting trial counsel's explanation and denying appellant's motion. Appellant has failed to show that the trial court's failure to replace the appointed attorney substantially impaired his right to assistance of counsel.

II. The trial court obtained a knowing and intelligent waiver of appellant's right to counsel

Appellant next contends that the trial court failed to obtain a knowing and intelligent waiver of his right to counsel. We disagree.

"The requirements for a valid waiver of the right to counsel are (1) a determination that the accused is competent to waive the right, i.e., he or she has the mental capacity to understand the nature and object of the proceedings against him or her; and (2) a finding that the waiver is knowing and voluntary, i.e., the accused understands the significance and consequences of the decision and makes it without coercion." (*People v. Koontz*

(2002) 27 Cal.4th 1041, 1069-1070.) The defendant must be made aware of the disadvantages of self-representation, including the risks and complexities of the particular case. (*People v. Blair* (2005) 36 Cal.4th 686, 708.) On appeal, we examine the entire record de novo to determine the validity of the defendant's waiver of the right to counsel. (*People v. Koontz*, *supra*, at p. 1070.)

Appellant complains that the trial court did not inquire into his education, familiarity with legal procedures, or his mental capacity despite the fact that appellant indicated at the *Marsden* hearing that he had been recently found incompetent and sentenced to Patton State Hospital. Appellant contends that the trial court did not explain that appellant would have to abide by the same rules as lawyers, he had no right to standby counsel, and that he would have no special library privileges or staff of investigators. He also complains that he was not given access to the library reserved for self-represented defendants. Appellant further asserts that the trial court did not explain the form petition to proceed in propria persona to him.

Appellant cites to *People v. Lopez* (1977) 71 Cal.App.3d 568 for the proposition that specific admonitions must be given. But that case merely proffered suggestions to comply with the dictates of *Faretta*, *supra*, 422 U.S. 806 and specifically denied intending "to establish any horrendously complex or rigid standards." (*People v. Lopez*, *supra*, at p. 571.) ""No particular form of words is required in admonishing a defendant who seeks to waive counsel and elect self-representation." [Citation.]" (*People v. Burgener* (2009) 46 Cal.4th 231, 241.) Moreover, a defendant's written waiver is valid even if the trial court does not orally question him as to his responses on the form. (*People v. Blair*, *supra*, 36 Cal.4th at p. 709.) The record shows that appellant signed the form which specifically certified that he would conduct his own defense without the assistance of a lawyer, and that he was obligated to follow rules of substantive law, criminal procedure, and evidence.

Furthermore, the record shows that the trial court carefully examined appellant to determine if he was competent and if he voluntarily waived his right to counsel, as

required under *Faretta*. The trial court asked appellant if he had any questions about the form he filled out, if he had ever represented himself, and if he understood that the crime was a specific intent crime. Appellant represented that he had no questions and he was positive that he wanted to represent himself. The trial court explained that appellant would be pitted against an experienced prosecutor and that appellant would be at a disadvantage, recommending that appellant be represented by counsel. The trial court additionally advised appellant that he would not be given an opportunity to reargue his case. While appellant now asserts that the trial court did not inquire into his mental capacity at the *Marsden* hearing, the record shows that the trial court determined that appellant was merely inquiring as to why he had not been sent to the hospital. Moreover, appellant had been found competent on August 15, 2006, a year before the *Marsden* hearing on August 17, 2007.

We also note that the record discloses that appellant was extremely articulate and filed four written motions on his own behalf. Despite his contention on appeal that he did not have access to the in propria persona library, the record shows that he was ordered placed in the unit reserved for in propria persona defendants at the September 18, 2007 hearing.

We are satisfied that the record discloses that appellant knowingly and intelligently waived his right to counsel.

III. The trial court's denial of appellant's posttrial motions for transcripts and discovery did not violate his constitutional rights

Appellant contends that he was denied his rights to due process and self-representation when the trial court denied his motions for transcripts and discovery. We disagree.

The State must provide an indigent defendant in a criminal case with a transcript of prior proceedings when the transcript is necessary for an effective defense or appeal. (*People v. Bizieff* (1991) 226 Cal.App.3d 1689, 1699.) The trial court determines need based on the value of the transcript to the defendant in connection with the proceeding for

which it is sought, and the availability of alternative devices that would fulfill the same functions as a transcript. (*Id.* at pp. 1699, 1700.) “An indigent defendant ‘is not entitled, as a matter of absolute right, to a full reporter’s transcript of his trial proceedings for his lawyer’s use in connection with a motion for a new trial; but, since a motion for a new trial is an integral part of the trial itself, a full reporter’s transcript must be furnished to all defendants . . . whenever necessary for effective representation by counsel at that important stage of the proceeding.’ [Citation.] There are no mechanical tests for deciding when the denial of transcripts for a motion for new trial is so arbitrary as to violate due process or to constitute a denial of effective representation. Each case must be considered on its own peculiar facts and circumstances.” (*Id.* at p. 1700.) The trial court may properly deny a request for free transcripts to prepare a motion for new trial where the indigent defendant fails to show a particularized need for transcripts. (*Id.* at p. 702.)

The trial court did not err in denying appellant’s request for transcripts on the basis that he had failed to make a sufficient showing of particularized need. When asked several times to specify what he needed, appellant replied that he wanted to look into everything on his trial transcript. When pressed, he stated that records showed that a gun was found in Coleman’s house even though Coleman testified at trial that he did not own a gun. He also asserted that his investigator should have discovered who pawned the items. We agree with the trial court’s determination that these issues, which were not critical to the case, could have been raised at trial. We also agree with the trial court that appellant was trying to delay sentencing by fishing for information. The trial court did not err in denying appellant’s requests for transcripts.

Appellant also requested discovery material. “‘The defendant generally is entitled to discovery of information that will assist in his defense or be useful for impeachment or cross-examination of adverse witnesses. [Citation.] A motion for discovery must describe the information sought with some specificity and provide a plausible justification for disclosure. [Citation.] The court’s ruling on a discovery motion is

subject to review for abuse of discretion. [Citation.]” (*People v. Prince* (2007) 40 Cal.4th 1179, 1232.)

We conclude that the trial court did not abuse its discretion in denying appellant’s discovery motion. Appellant requested discovery as to whether inducements were offered to any witnesses. The People represented that no inducements were offered to any witnesses. Appellant requested the photo six-pack that was shown to the customer in the E.B. Games robbery, admitting that he was “just really like grasping into thin air trying to see maybe if there was any biasness or suggestiveness in the six-packs” However, that customer did not testify at trial and the six-pack was never introduced into evidence. Appellant also requested the lost videotape, which the trial court determined was a pretrial issue. The court also found that there was no evidence that the videotape was intentionally misplaced. In connection with that issue, the trial court noted that the evidence of appellant’s guilt was overwhelming because every victim on each charge as well as the security guard identified appellant as the perpetrator. The court found that appellant was merely attempting to undermine those identifications on a posttrial basis. Appellant also requested crime scene photos, which were not presented at trial, and were not requested by appellant during the course of trial. The trial court noted that the crime scene photos would not have assisted appellant, and that Coleman and the police officers testified at trial that Coleman’s house had been ransacked.

We conclude that the trial court did not err in denying appellant’s motion for transcripts because appellant failed to make a showing of a particularized need. Further, the trial court did not abuse its discretion in denying appellant’s posttrial discovery motion.

DISPOSITION

The judgment is affirmed.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST